

Australian Standard™

**General conditions of contract for the
provision of asset maintenance and
services
(Superintendent's version)**



This Australian Standard was prepared by Committee OB-012, Service Contracts. It was approved on behalf of the Council of Standards Australia on 18 June 2003. This Standard was published on 22 August 2003.

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provision of asset maintenance and
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Preface

This Standard was prepared by the Australian members of the Joint Standards Australia/Standards New Zealand Committee OB-012, Service Contracts.

This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

After consultation with stakeholders in both countries, Standards Australia and Standards New Zealand decided to develop this Standard as an Australian Standard rather than an Australian/New Zealand Standard.

AS 4919—2003 *General conditions of contract for the provision of asset maintenance and services (Superintendent's version)* is part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard is intended to be used where services are generally performed on the premises of the Principal.

These conditions of contract are published in three versions. Where the Contract is administered through a Superintendent, use this Standard AS 4919—2003. Where the Principal uses a Principal's representative and a Superintendent is not engaged, use Standard AS 4920—2003. If a short version of the conditions of contract is required, use AS 4921—2003.

The objective of AS 4919—2003 *General conditions of contract for the provision of asset maintenance and services (Superintendent's version)* is to allocate the obligations and responsibilities between parties making formal agreements covering provision of periodical services between Principals (including government authorities and agencies) and Contractors.

These conditions of contract are not suitable for:

- a) construction projects;
- b) projects of a non-service nature;
- c) professional consulting services;
- d) records or systems management; or
- e) supply of equipment.

Subclauses 6.5 and 25.2, prefixed by *, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in Annexure Part C or elsewhere that they are not to apply. See paragraph i) of clause 1 on page 3 for the effect of stating changes in Annexure Part C.

Warnings

- 1) **Users of this Australian Standard are warned that clause 12 (Damage to persons and property, other than the Services) does not limit the liability of parties for special, indirect or consequential losses, notwithstanding any limitations or exclusions permitted under insurance clauses 14 (Insurance of the liability to reinstate) and 15 (Public liability insurance).**

However clause 13 (General limitations of liability) allows the parties to agree to limit their liability in certain respects.

Parties wishing to limit their liability should seek legal and insurance advice before entering a Contract under this Standard.

- 2) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

Item	means an <i>Item</i> in Annexure Part A;
compensable cause	means: - any act, default or omission of the <i>Superintendent</i>, the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i>); or - those listed in <i>Item 29</i>;
Contract	has the meaning in clause 4;
contract sum	means: - where the <i>Principal</i> accepted a lump sum, the lump sum; - where the <i>Principal</i> accepted rates, the sum of the products ascertained by multiplying the rates and the corresponding quantities in the <i>schedule of rates</i>; or - where the <i>Principal</i> accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b), but excluding any additions or deductions which may be required to be made under the <i>Contract</i>;
Contractor	means the person bound to perform and complete <i>the Services</i> ;
date of acceptance of tender	means the date which appears on the written notice of acceptance of the tender;
defects	has the meaning in subclause 30.2 and includes omissions;
defects liability period	has the meaning in subclause 30.2;
direction	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
dispute	has the meaning in clause 37;
EOT (from 'extension of time')	has the meaning in subclause 29.3;
excepted risk	has the meaning in subclause 11.3;
final certificate	has the meaning in subclause 32.3;
final payment claim	means the final payment claim referred to in subclause 32.3;
intellectual property right	means any patent, registered design, trademark or name, copyright or other protected right;
latent condition	has the meaning in subclause 22.1;

- legislative requirement** includes:
- a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *the Services* or the particular part thereof are being performed;
 - b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of *the Services*; and
 - c) fees and charges payable in connection with the foregoing;
- performance duration** means the duration stated in *Item 7* for a *single performance*;
- performance period cycle** means, where *the Services* are to be performed on more than one occasion during the *total performance period*, the frequency or occasions stated in *Item 8* for a *single performance*;
- performance program** has the meaning in clause 27;
- premises** means the place where *the Services* are to be performed, and includes where the context so requires, anything on the premises;
- prescribed notice** has the meaning in subclause 36.1;
- Principal** means the Principal stated in *Item 1*;
- progress certificate** has the meaning in subclause 32.2;
- public liability policy** has the meaning in clause 15;
- qualifying cause of delay** means:
- a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
 - b) other than:
 - i) a breach or omission by the *Contractor*; and
 - ii) stated in *Item 25*;
- schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be performed, shows the rate or respective rates of payment for the performance of that *work* and which may also include lump sums, provisional sums, other sums, quantities and prices;
- security** means:
- a) cash;
 - b) retention moneys;
 - c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
 - d) interest bearing deposit in a bank carrying on business at the place stated in *Item 11(c)*;
 - e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
 - f) other form approved by the party having the benefit of the security;

- single performance** means a performance of *the Services* on one occasion;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under subclause 18.2;
- the Services** means the whole of the *work* which the *Contractor* is required to perform and complete under the *Contract* and includes *variations*, remedial *work* and all other *work* reasonably necessary for the performance of the *Contract*;
- total performance period** means the period of time stated in *Item 9* and as adjusted pursuant to the *Contract*;
- variation** has the meaning in clause 31;
- work** includes the provision of materials, and like words have a similar meaning.
- In the *Contract*:
- a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
 - b) unless otherwise stated, time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
 - c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
 - d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
 - e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
 - f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 10*;
 - g) unless otherwise provided, prices are in the currency in *Item 11(a)* and payments shall be made in that currency at the place in *Item 11(b)*;
 - h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 10*; and
 - i) the changes in Annexure Part C shall be deemed to be part of these General Conditions.

2 Performance and payment

The *Contractor* shall perform and complete *the Services* in accordance with the *Contract* and *directions* authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- a) for *the Services* for which the *Principal* accepted a lump sum, the lump sum; and
- b) for *the Services* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *the Services* actually performed under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

3 Security

3.1 Provision

Security shall be provided in accordance with *Item 12* or *13*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

3.2 Recourse

Security shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

3.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

3.4 Release

A party's entitlement to *security* shall cease 14 days after payment of the *final payment claim*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

3.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

4 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under the clause by written notice to the parties.

5 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- b) on the earliest date of:
 - i) actual receipt;
 - ii) confirmation of correct transmission of fax; or
 - iii) 3 days after posting.

6 Contract documents

6.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of performing *the Services*, that party shall give the *Superintendent* written notice of it. The *Superintendent* thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

If compliance with any such *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

6.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 14*.

They shall:

- a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- b) not be used, copied nor reproduced for any purpose other than performing *the Services*.

6.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies thereof, both stated elsewhere in the *Contract*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- b) notwithstanding clause 2, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* direction about that document, the *Superintendent* shall give, within the time stated in *Item 15*, the appropriate *direction*, including reasons if the document is not suitable.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of *the Services*.

6.4 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

*6.5 Media

The *Contractor* shall not disclose any information concerning *the Services* for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning *the Services*.

* See Preface on page (iii)

7 Assignment and subcontracting

7.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

7.2 Subcontracting generally

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- a) subcontract or allow a subcontractor to subcontract any *work* described in *Item 16*; or
- b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed subcontractor. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- a) provision that the subcontractor shall not assign nor subcontract without the *Contractor's* written consent; and
- b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*.

7.3 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*.

8 Intellectual property rights

The *Principal* warrants that, unless otherwise provided in the *Contract*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

9 Legislative requirements

9.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 17* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract*, shall promptly give the *Superintendent* written notice thereof.

9.2 Changes

If a *legislative requirement*:

- a) necessitates a change;
 - i) to the *Services*, or
 - ii) in a fee or charge or payment of a new fee or charge;
- b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

10 Protection of people and property

10.1 Protection

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- a) take measures necessary to protect people and property including complying with the *Superintendent's directions* regarding the *Principal's* requirements in respect thereof;
- b) avoid unnecessary interference with the passage of people and vehicles; and
- c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this subclause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

10.2 Urgent protection

If urgent action is necessary to protect *the Services*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this subclause.

10.3 Occupational Health and Safety

The *Contractor* shall comply with the *Superintendent's* directions in regard to the application of the *Principal's* occupational health and safety policy and procedures for the *premises*.

If compliance with any *Superintendent's* direction given pursuant to the preceding paragraph causes the *Contractor* to incur more or less cost than a competent contractor could reasonably have anticipated at the date of the closing of tenders, then that compliance shall be a deemed *variation*.

If the *Contractor* fails to comply with an obligation under this subclause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

11 Care of the Services and reinstatement of damage

11.1 Care of the Services

Except as provided in subclause 11.3, whilst performing *the Services* the *Contractor* shall be responsible for the care of *the Services*.

11.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *the Services* during the period of the *Contractor's* care, the *Contractor* shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

11.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);

- b) any risk specifically excepted elsewhere in the *Contract*;
- c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its subcontractors or either's employees or agents;
- e) use or occupation of any part of the *premises* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*);
- f) damage which is the unavoidable result of the performance of *the Services* directed by the *Superintendent* or *Principal* during an emergency;
- g) the correction of anything discovered during the performance of *the Services*, not being part of *the Services* but required to be corrected due to a *legislative requirement*; and
- h) defects in the design of *the Services*, other than design provided by the *Contractor*.

12 Damage to persons and property other than the Services

12.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *the Services*.

The *Contractor* shall indemnify the *Principal* against:

- a) loss of or damage to the *Principal's* property; and
- b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the performance of the *Services*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- a) claims that may be made by any person for injury, death, loss or damage resulting from the performance of *the Services* directed by the *Superintendent* or the *Principal* during an emergency;
- b) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- c) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- d) things for the care of which the *Contractor* is responsible under subclause 11.1;

- e) damage which is the unavoidable result of the performance of *the Services* in accordance with the *Contract*;
- f) damage in respect of any part of the *premises* hidden or inaccessible, details of which have not been supplied by the *Principal* before the closing of tenders; and
- g) claims in respect of the *Principal's* right to have *the Services* performed.

12.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in the second-mentioned paragraph (a) of subclause 12.1 but the indemnity shall be reduced proportionately to the extent that the act or omission of the *Contractor* or its subcontractors or either's employees or agents, may have contributed to the injury, death, loss or damage.

The *Principal* shall also indemnify the *Contractor* in respect of damage referred to in paragraphs (e) and (f) of subclause 12.1 and claims referred to in paragraph (g) of subclause 12.1.

13 General limitations of liability

13.1 Limitation of liability

Subject to subclause 13.2, the liability of each party arising in connection with the subject matter of the *Contract* including a claim:

- a) in tort;
- b) under statute; or
- c) for rectification or frustration,

or like claim available under the law governing the *Contract*, is limited to the amounts stated in *Items* 18 and 19, as the case may be.

This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

13.2 Exclusion of limitation of liability

The limitation of liability under subclause 13.1 shall not apply to:

- a) liability to pay the *contract sum* as adjusted pursuant to the *Contract*;
- b) liability to pay interest;
- c) liability to account for *security*;
- d) liability for infringement of *intellectual property rights*;
- e) liability for liquidated damages and delay damages;
- f) the extent that liability is otherwise limited by another provision of the *Contract*; and
- g) liability out of which by law the party liable cannot contract.

Amounts payable in respect of paragraphs (a) to (g) of this subclause shall not be included in the limitation of liability under subclause 13.1.

14 Insurance of the liability to reinstate

Before commencing the performance of *the Services*, the *Contractor* shall insure its liability under subclause 11.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for the care of *the Services*.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 11.2 and things to form part of *the Services* but may exclude:

- a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- c) consequential loss of any kind, but shall not exclude loss of or damage to *the Services*;
- d) damages for delay in completing or for the failure to complete *the Services*;
- e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 11.3.

The insurance cover shall be for an amount not less than the amount stated in *Item 20*.

Insurance shall be in the joint names of the parties, shall cover the parties and all subcontractors whenever performing *the Services* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 11.1 for the care of *the Services*.

15 Public liability insurance

The Alternative in *Item 21(a)* applies.

Alternative 1 : Contractor to insure

Before commencing *the Services*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- a) be in the joint names of the parties;
- b) cover the:
 - i) respective rights and interests; and
 - ii) liabilities to third parties,